Supreme Court, U.S.
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No. 88-2102

In The

Supreme Court of the United States

October Term, 1989

JAMES STEWART, PATRICIA HITCHCOCK O'CONNELL and SAMUEL TAYLOR both as co-trustees of the Second Residuary Trust of the Last Will of ALFRED H. HITCHCOCK, MCA INC., and UNIVERSAL FILM EXCHANGES, INC.

Petitioner,

vs.

SHELDON ABEND, dba AUTHORS RESEARCH COMPANY,

Respondent.

RESPONDENT'S RESPONSE TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, SUBMITTED BY COLUMBIA PICTURES INDUSTRIES, INC., MGM/UA COMMUNICATIONS CO., ORION PICTURES CORPORATION, PARAMOUNT PICTURES CORPORATION, TURNER ENTERTAINMENT CO., TWENTIETH CENTURY FOX FILM CORPORATION, AND WARNER BROS. INC.

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November 1989

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Respondent Sheldon Abend submits this Response to the Motion for leave to file an *amicus curiae* brief, submitted by Columbia Pictures Industries MGM/UA Communications Co., Orion Pictures Corporation, Paramount Pictures Corporation, Turner Entertainment Co., Twentieth Century Fox Film Corporation and Warner Bros., Inc.

The proposed *amici* are, like petitioner MCA, Inc., companies engaged in the production and distribution of motion pictures. In fact, petitioner MCA, Inc.'s subsidiary, Universal City Studios, Inc., and the proposed *amici* are members of the same trade organization, the Motion Picture Association of America.[1] The proposed *amici* are simply in the identical position as petitioner MCA, Inc., with respect to the issues in this case. These motion picture companies have nevertheless already filed an *amicus curiae* brief before the Ninth Circuit Court of Appeals in this matter, and also filed an *amicus curiae* brief in support of the petition for certiorari.

When the proposed *amici* asked respondent to consent to their filing of a third brief, respondent requested that they describe the "facts or questions of law that have not been, or reasons for believing that they will not

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[1] Moreover, counsel for the proposed *amici* has also represented petitioner MCA, Inc. and its subsidiaries. *See, e.g., Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984); *CM Record Corp. v. MCA Records, Inc.* 168 Cal. App. 3d 965, 214 Cal. Rptr. 409 (1985); *Lugosi v. Universal Pictures*, 25 Cal.3d 813, 160 Cal.Rptr. 323, 603 P.2d 425 (1979); *MCA Records Inc. v. Newton-John*, 90 Cal. App. 3d 18, 153 Cal.Rptr. 153 (1979); *MCA, Inc. v. Universal Diversified Enterprises Corp.*, 27 Cal. App. 3d 170, 103 Cal.Rptr. 522 (1972).

adequately be, presented by" petitioner MCA, Inc. *See* Rule 36.3, Supreme Court Rules. The proposed *amici* suggested that the page limitation applicable to MCA, Inc.'s brief would prevent MCA, Inc., from fully discussing "policy considerations." The proposed *amici* declined to elaborate or to identify these "policy considerations." Respondent then withheld his consent because it appeared that an *amicus* brief by others in the identical situation as petitioner MCA, Inc., would not meet the standard of Rule 36, would not otherwise aid the Court, and would instead simply be used to circumvent the page limitations applicable to briefs and thereby increase the burden upon the Court and respondent.

Now, the Motion to file the *amicus* brief makes no better showing than that offered when the proposed *amici* sought respondent's consent. For instance, the Motion recites that the proposed *amici* possess "experience in producing, financing, distributing, and copyrighting motion pictures, . . . " [Motion at p. (iii)], but petitioner MCA, Inc., is in the identical business and has that exact same experience. And although the Motion also indicates that an *amicus* brief will allow these motion picture studios to make arguments that petitioners would not be able to make because of the page limitation, [See Motion at p. (iv), n.4], the proposed *amici* once again fail to identify these "policy considerations."

The Motion thus falls short of the requirements of Rule 36. It appears instead that the proposed *amicus* brief is simply an attempt to say twice what petitioners have already said in their own brief. Respondent therefore suggests that unless the Court determines that its task

will be aided by a brief from the other major motion picture studios, the Motion should be denied.

Dated: November 29, 1989

Respectfully submitted,

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